

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SEAN M. YOUNG,

Plaintiff,

OPINION AND ORDER

v.

20-cv-359-bbc

MATTHEW SCULLION, BEN TIERNEY, SHAUN FUNK,
KEITH WIEGEL, SHAWN GALLINGER, JOSHUA FEDIE,
KIMBERLY FINNELL, MARLESHA FISHNICK AND
LEBBEUS BROWN,

Defendants.

On September 30, 2021, this court granted summary judgment to defendants on plaintiff Sean M. Young's claims that defendant Keith Wiegel sexually assaulted him during a strip search on December 4, 2019, and that defendants Matthew Scullion, Shaun Funk, Ben Tierney, Joshua Fedie, Kimberly Finnell, Marlesha Fishnick, Shawn Gallinger and Lebbeus Brown failed to intervene to stop the assault. 9/30/21 Op. and Ord., dkt. # 47. Now before the court is defendants' motion to impose two "strikes" against plaintiff under 28 U.S.C. § 1915(g) as a sanction for his having filed a frivolous complaint. Dkt. ## 44, 50. Plaintiff has not filed a response to the motion.

Section 1915(g) reads:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

In the summary judgment order, I found that multiple video recordings of the December 4, 2019 strip search showed that “plaintiff’s claim of being physically and sexually abused by some of the defendants while others looked on is patently frivolous.” Dkt. #47, at 2. This finding warrants imposing a strike against plaintiff under § 1915(g). However, I see no reason to impose two strikes, as defendants have requested. Defendants’ request appears to be based upon their understanding that plaintiff’s claims about the December 4, 2019 strip search were initially joined with other claims that were allowed to proceed separately as case number 19-cv-742. See Mot. for Sanctions, dkt. #44, at 7. Defendants are incorrect. Case 19-cv-742 was proceeding before plaintiff even filed this case and does not concern any of the events described in plaintiff’s initial complaint in this case. Accordingly, only one strike is warranted.

ORDER

IT IS ORDERED that defendants’ motion for sanctions, dkt. ## 44, 50, is GRANTED IN PART and DENIED IN PART. Plaintiff Sean Young is assessed a strike under 28 U.S.C. § 1915(g) because his claims in this lawsuit were frivolous. Defendants’ request that the court impose a second strike is denied.

Entered this 10th day of November, 2021.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge